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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/679,180
Filing Date: October 03, 2003
Appellant(s): BLACK ET AL.

Mark W. Sincell, Ph.D.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/23/2006 appealing from the Office action
mailed 8/03/2006

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

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(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6497659	Rafert	12-2002
6441748	Takagi et al	0/-2000
5576698	Card et al	11-1996

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-11 and 13-19, 21 have been provisionally finally rejected under 35 U.S.C.

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101 as claiming the same invention as that of claims 1-14 and 18-25 of copending Application No. 10/679,180. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

The sole difference between the claim sets is the intended use. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since the claims do not express or imply a structural difference, they are not seen to be patentably distinct.

Claims 1, 8-12 have been finally rejected under 35 U.S.C. 102(e) as being anticipated by Rafert.

With regard to claim 1, Rafert (US 6,497,659) discloses (Fig. 1, 2, 3, 8, 14) dependent device (10), comprising:

an interconnect for a location at least one bus (12 or) adapted to provide at least one bus signal to the location dependent device, and a plurality of electrical contacts (24, 26 or 56, 58, 60) external to the location dependent device and capable of providing a signal indicative of a physical location of the location dependent device when the location dependent device is installed.

With regard to claim 8, Rafert discloses that at least one circuit element (22) deployed intermediate then first electrical contact and the at least one second electrical contact.

With regard to claims 9, 10, Rafert discloses that the at least one circuit element comprises at least one of a resistor (40), a capacitor (22), a voltage reference circuit, and a trace (406) having a selected resistance.

With regard to claims 11, 12, Rafert discloses control signal and a sensor.

Claims 1, 13, 21 have been finally rejected under 35 U.S.C. 102(b) as being anticipated by Takagi et al.

With regard to claims 1, 13 Takagi (US 6,441,748) discloses (Fig. 4, 1, 2) an interconnect for a location dependent device (1), comprising: at least one bus (15, 16) adapted to provide at least one bus signal to the location dependent device, and a plurality of electrical contacts (contacts of 20) external to the location dependent device and capable of providing a signal indicative of a physical location of the location dependent device when the location dependent device is installed.

Claims 1- 6, 8, 11,13, 14, 17-19 have been finally rejected under 35 U.S.C. 102(b) as being anticipated by Card et al.

Card et al disclose this interconnect comprises a bus (aL) with a plurality of contacts connecting it to device MC'. As noted throughout the description, the pin connections are selected to provide a signal (or address) indicative of the location of the device. It is noted that this device is capable of being used for a location of dependent device as claimed. The device includes first and second contacts (see the various types in Figs. 3 and 40. In regard to claims 3 and 8, the first and second contacts are sockets (see Fig. 3).

Claims 4 and 5 have been finally rejected under 35 U.S.C. 103(a) as being unpatentable over Card. The use of solder is a well known alternative to pins/sockets and is used to assured continuous connections. For this reason, it would have been obvious to use soldered connections in place of the sockets of Card.

(10) Response to Argument

Regarding the double-patenting rejection:

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Concerning the arguments presented on page 5 of the Brief, the examiner agrees with the legal findings cited by appellant. On page 6, first full paragraph of the Brief appellant argues that the preamble recitations of "an interconnect *for* an attitude control device" such as *may be* deployed on a missile and "an interconnect *for* a location dependent device" such as *may be* deployed on an automobile imply structural limitations and therefore must be treated as claim limitations, and thus the claims are not identical for purposes of 35 U.S.C. 101.

The examiner disagrees. The claims do not set forth such structural limitations. The claims are identical except for the preambles and thus positively recite the same structural limitations. The conflicting sets of claims only differ in intended use upon which patentability cannot be predicated.

Also, terms "a location dependent device" and "an attitude control device" are not self-explanatory. Both terms describe a device having a property related to the device attitude (position) or location. Appellants do not discuss why the device on a missile should be termed "an attitude control device" and cannot be termed "a location dependent device." As it was shown in the rejection, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Since the claims do not express or imply a structural difference, they are not seen to be patentably distinct.

Regarding the rejections under 35 U.S.C. 102:

Rejection over Rafert (Section C of the Brief, p.8-9)

Applicants argue (Brief, p. 8, the second paragraph) that

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a/ the sensor is not location dependent device; b/ the cable 12 is not a bus; c/ the connector 20 does not configured to provide a signal of a physical location of the location dependent device. However, the location dependent device is not positively claimed. What Claim do claims is an interconnect which has a plurality of electrical contacts ... capable of to provide a signal of a physical location of the location dependent device when location dependent device is installed. Rafert clearly disclose the positively recited structural elements: bus 10 (Fig. 1) and plural contacts 24, 26 (Fig. 2) which are capable of providing a signal. Claim does not positively claim the bus signal, the location dependent device, nor the signal indicative of a physical location. As for term "bus", the Dictionary of Electronic, 6ty Ed. is defines "bus" as a main conductor in a circuit and the cable 12 provided for the same function.

Rejection over Takagi (Section D of the Brief, p.8-9)

Appellants argue (Brief, p. 9, the second paragraph) that Takagi do not inherently describe contacts within the differential GPS unit 20 that are capable of providing a signal indicative of a physical location of the location dependent device when the location dependent device is installed, as set forth in claims 1 and 13.

However, it is inherently that GPS units to properly function should have contacts capable of providing a signal (23) indicative of a physical location dependent device when the location dependent device is installed (Fig. 8 of Takagi et al). Any GPS device being an electronic device should include a plurality of contacts which a part of a mechanism providing a signal indicative of a physical location of a location dependent device.

Further, Appealants submit (Brief, p. 10, the second paragraph) that Takagi does not inherently describe or suggest a plurality of contacts external to the location dependent device since the contacts are located within the unit 20. Obviously, Appellants assume that the unit 20 should be the location dependent device. However, it is not positively claimed that the

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interconnect should be a part of the location dependent device. According to Takagi and the Office action, not the GPS unit 20 being a location dependent device , but a device deployed on a vehicle (Takagi, Fig. 8).

Rejection over Card (Section E of the Brief, p.11-12)

Regarding the arguments presented on page 11 of the Brief, the examiner is willing to concede that the address described by Card et al may not indicate a physical location. Concerning the arguments presented in the first paragraph of page 9 of the Brief, the examiner concedes that indication that the mating connectors in Card have mated may not necessarily indicate a relative location of the modules and the mating connectors. Regarding the arguments presented in the first paragraph of page 12 of the Brief, the examiner does not disagree with appellant that determining a relative location of the modules does not necessarily determine a physical location of the module. However, the examiner maintains that the claims do NOT positively recite "a signal indicative of a physical location of the attitude control device when the attitude control device is installed." The claims DO set forth "a plurality of electrical contacts capable of providing a signal indicative of a physical location..." Virtually any electrical contact is capable of providing a signal, and thus the contacts of Card et al are capable of providing such a signal when the attitude control device is installed. Card et al for the majority of claims clearly discloses the positively recited structural elements. These structural elements are bus (aL) and plural socket contacts 1-25 (Figure 3). The claims are extremely broad due to the use of terms such as "for", "adapted to", "capable of", "when" and "optionally". Appellant does not dispute this. Nor does Appellants dispute the fact that the claims do NOT positively recite the bus signal, the attitude control device, nor the signal indicative of a physical location.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

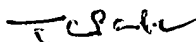
Respectfully submitted,

Alexander Gilman



Conferees:

for Paula Bradley



Darren Schuberg

